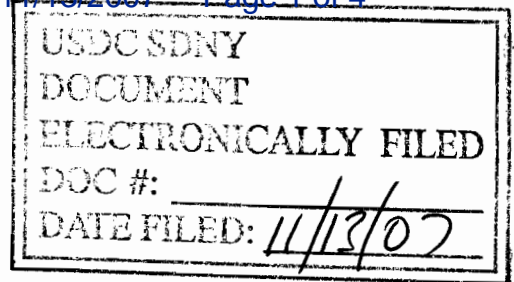




# Urban Justice Center

123 William Street, 16th floor, New York, NY 10038  
Tel: (646) 602-5600 • Fax: (212) 533-4598  
www.urbanjustice.org

MEMO ENDORSED



## Board of Directors

**Mitchell A. Lowenthal, Esq.**  
*Chairman*  
Partner  
Cleary Gottlieb Steen & Hamilton LLP

**Felipe Aransaenz**  
Managing Director  
York Stockbrokers

**Michael A. Barasch, Esq.**  
Partner  
Barasch McGarry Salzman & Penson

**Pat Budziak**  
Member  
i2 Foundation

**Peter Cicchino, Esq.**  
*In Memoriam (1960-2000)*

**Jonathan Cole, Ph. D.**  
J.M. Mason Professor of the University  
Provost & Dean of Faculties, *Emeritus*  
Columbia University

**Marc Falcone, Esq.**  
Partner  
Paul, Weiss, Rifkind, Wharton & Garrison LLP

**Jeffrey D. Haroldson, Esq.**  
President  
HDG Mansur Capital Group, LLC

**Helen Hershkoff, Esq.**  
Professor  
New York University School of Law

**Raquiya LaBrie, Esq.**  
Program Director  
Open Society Institute

**Stephen Loffredo, Esq.**  
Professor  
CUNY Law School

**Christopher J. Meade, Esq.**  
Partner  
WilmerHale

**Arnold B. Peinado, III, Esq.**  
Partner  
Milbank, Tweed, Hadley & McCloy LLP

**David A. Singleton, Esq.**  
Executive Director  
Ohio Justice and Policy Center

**Christopher K. Tahbaz, Esq.**  
Partner  
Debevoise & Plimpton LLP

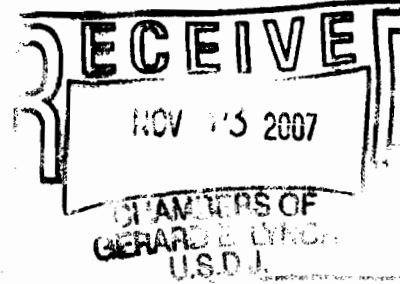
**David Tobis, Ph.D.**  
Executive Director  
Fund for Social Change

Executive Director  
Douglas Lasdon, Esq.

November 9, 2007

## By Hand

Honorable Gerard E. Lynch  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007



Re: *Vega Marin v. Sixth Ave. Shoe Repair Corp., et al.*, 07 Civ. 6191 (GEL)

Dear Judge Lynch:

Pursuant to Rule 2(F) of your Honor's Individual Rules, the parties to the above-referenced action hereby submit this joint letter regarding their discovery dispute.

## *Plaintiff's Position*

Plaintiff seeks an order compelling Defendants to produce documents in response to Request for the Production of Documents and to respond to Interrogatory 22.

### 1. Failure to Receive Any Documents

Pursuant to the Court's Case Management Plan, Plaintiff served his Request for the Production of Documents by priority mail on September 11, 2007. Rule 34(b) of the Federal Rules of Civil Procedure requires a party to serve responses to requests for the production of documents within 30 days of service.

On October 23, 2007, Plaintiff's counsel faxed a letter to Defendants informing them pursuant to Federal Rule of Civil Procedure 37(a)(2)(A) and Rule 2(F) of Your Honor's Individual Rules that the discovery requests were outstanding and to request that Defendants provide their responses by the close of business the following day.

After receiving no response to Plaintiff's letter on this issue, Plaintiff's counsel, Elena Goldstein, spoke with Defendants' counsel, Kenneth Geller, by telephone on October 26, 2007. Defendants' counsel stated that Plaintiff could expect to receive responses by November 2,

## Urban Justice Center

2007. Plaintiff did not receive Defendants' responses on November 2, 2007.

On November 7, 2007, Plaintiff received Defendants' written responses to the document requests, but has not received any actual documents. Defendants' responses indicate that documents are being reviewed and that, if responsive documents are found, will be produced at some later, unspecified date. Defendants' counsel, Kenneth Geller, and Plaintiff's counsel, Molly Biklen and Elena Goldstein, conferred by telephone regarding this matter on November 9, 2007,<sup>1</sup> but Defendants' counsel was unable to give a date certain by which the documents would be produced.

Fact discovery closes on December 14, 2007 and Plaintiff has noticed several depositions to occur before then. Plaintiff cannot take depositions or proceed with discovery in an orderly or efficient fashion without receiving Defendants' documents responsive to his requests. Accordingly, Plaintiff seeks a pre-motion conference to resolve this matter.

2. Defendants' Objections to Interrogatories and Document Requests Concerning Enterprise Liability

Plaintiff served several interrogatories and document requests seeking information and documents concerning the operation, corporate structure, and financial statements of the three businesses alleged to be an enterprise under the FLSA. Specifically, Interrogatory 22 asks Defendants to "identify all persons involved in ordering or stocking merchandise or supplies" at the three stores. Document requests 18-20 seek financial statements for the three stores, including gross and net revenues, requests 31 and 32 ask for documents related to the legal status, ownership and shareholders of the three stores, request 34 seeks documents related to the ordering of inventory and supplies for the three stores and request 35 asks for documents related to the assets and liabilities of each of the Defendants.

Defendants have objected to Interrogatory 22 and each of the above-described document requests insofar as they seek information regarding University Place Shoe Repair Corp. and Seventh Ave. Shoe Repair Corp. on the grounds that such information is not relevant. They also object to producing business tax returns for Defendant Sixth Ave. Shoe Repair Corp. on the ground that tax returns are not relevant and object to Request 35 in its entirety on the grounds that such information is not relevant.

These requests are directly relevant to the question whether Defendant Sixth Ave. Shoe Repair Corp., University Place Shoe Repair Corp., and Seventh Ave. Shoe Repair Corp. together constitute an enterprise under 29 U.S.C. § 203(r)(1). Discovery into the three stores' revenues, as well as whether they conducted related activities, operated under unified or common control, and possessed a common business purpose, is central to Plaintiff's claims. *See, e.g., Bowrin v. Catholic Guardian Soc'y*, 417 F. Supp. 2d 449, 458 (S.D.N.Y. 2006). In addition, as Defendant Cesar Andrade is the President of all three corporations and both individual defendants operate and manage the three stores, these materials are in the custody and control of the named defendants. For the same reason, the assets and liabilities of the each of the defendants are relevant to the enterprise inquiry.

<sup>1</sup> This conversation took place at 11 a.m. and lasted approximately 25 minutes.



Plaintiff corresponded with Defendants regarding this issue on November 7, 2007, and Plaintiff's counsel, Molly Biklen and Elena Goldstein, conferred with Defendants' counsel, Kenneth Geller, by telephone on November 9, 2007. Defendants maintain their relevance objection to Interrogatory 22 and Requests 18-20, 31, 32, 34, and 35. Accordingly, Plaintiff seeks the intervention of the Court to compel responses to and production of documents responsive to the above-described requests.

*Defendants' Position*

Defendants' maintain that the purpose of discovery is not to establish the Court's jurisdiction. Allegations were made in plaintiff's complaint that the statutory jurisdictional requirements were present. Defendants' maintain that when plaintiff's complaint was filed, did not have any information that he could in good faith rely upon to allege that the individual corporate defendant had the jurisdictional revenues or that the so called enterprise had revenues that satisfied the statute. Likewise, plaintiff had no information to rely upon to make the enterprise allegation.

The individual defendants maintain that the requests for their individual financial data is irrelevant. It will not establish jurisdiction and has no bearing on whether plaintiff was or was not paid in accordance with the law.

Respectfully Submitted,

By: Molly K. Biklen  
Molly Biklen (MB 3491)  
Urban Justice Center  
123 William Street, 16th Floor  
New York, NY 10038

By: \_\_\_\_\_  
Kenneth Geller (KG 2399)  
Kenneth Geller, P.C.  
372 Doughty Blvd.  
Inwood, NY 11096

and

YISROEL SCHULMAN, ESQ  
New York Legal Assistance Group  
Elena Goldstein, of Counsel (EG 8586)  
450 West 33rd St., 11th Floor  
New York, NY 10001  
Ph.: (212) 613-5000

*Attorneys for Plaintiffs*

*Attorney for Defendants*

*Enterprise liability being alleged, the information requested is relevant to that issue. Accordingly, defendants are directed to answer their interrogatory and produce the requested documents.*

**SO ORDERED**

Gerard E. Lynch  
**GERARD E. LYNCH, U.S.D.J.**

11/13/07

## Urban Justice Center

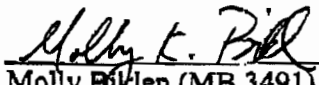
Plaintiff corresponded with Defendants regarding this issue on November 7, 2007, and Plaintiff's counsel, Molly Biklen and Elena Goldstein, conferred with Defendants' counsel, Kenneth Geller, by telephone on November 9, 2007. Defendants maintain their relevance objection to Interrogatory 22 and Requests 18-20, 31, 32, 34, and 35. Accordingly, Plaintiff seeks the intervention of the Court to compel responses to and production of documents responsive to the above-described requests.

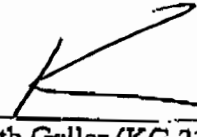
### *Defendants' Position*

Defendants maintain that the purpose of discovery is not to establish the Court's jurisdiction. Allegations were made in plaintiff's complaint that the statutory jurisdictional requirements were present. Defendants maintain that when plaintiff's complaint was filed, did not have any information that he could in good faith rely upon to allege that the individual corporate defendant had the jurisdictional revenues or that the so called enterprise had revenues that satisfied the statute. Likewise, plaintiff had no information to rely upon to make the enterprise allegation.

The individual defendants maintain that the requests for their individual financial data is irrelevant. It will not establish jurisdiction and has no bearing on whether plaintiff was or was not paid in accordance with the law.

Respectfully Submitted,

By:   
Molly Biklen (MB 3491)  
Urban Justice Center  
123 William Street, 16th Floor  
New York, NY 10038

By:   
Kenneth Geller (KG 2399)  
Kenneth Geller, P.C.  
372 Doughty Blvd.  
Inwood, NY 11096

and

*Attorney for Defendants*

YISROEL SCHULMAN, ESQ  
New York Legal Assistance Group  
Elena Goldstein, of Counsel (EG 8586)  
450 West 33rd St., 11th Floor  
New York, NY 10001  
Ph.: (212) 613-5000

*Attorneys for Plaintiffs*